

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

PHILLIP JAQUEZ,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-05-0725-F
)	
CORRECTIONS CORPORATION)	
OF AMERICA,)	
)	
Defendant.)	

ORDER

Plaintiff Phillip Jaquez's objection to the Report and Recommendation of Magistrate Judge Robert E. Bacharach is before the court. (Doc. no. 9.) Mr. Jaquez appears pro se, and his pleadings are liberally construed.

Mr. Jaquez was granted in forma pauperis status on June 28, 2005, and was ordered to make an initial payment of \$6.07 toward the filing fee. Because Mr. Jaquez had failed to pay the required partial filing fee and had failed to demonstrate good cause for his failure to pay, the Report and Recommendation proposed dismissing this action without prejudice. The Report noted that Mr. Jaquez had previously been warned that failure to pay the fee could result in dismissal of this action. The Report noted that an earlier account statement attached to Mr. Jaquez's application to proceed in forma pauperis reflected an account balance of \$68.06 in his prison account.

In his objection to the Report, Mr. Jaquez states that he did not pay the partial filing fee because he was waiting on an account statement from the central corrections office in Phoenix, Arizona. Mr. Jaquez states that it will take him one month to save the required \$6.07, and he asks the court for a ninety-day extension of time within which to make the required \$6.07 initial payment. He attaches an Arizona Department

of Corrections Certified Statement of Account to his objection. The statement indicates that as of August 15, 2005, Mr. Jaquez had a spendable and retained balance of \$.17 in his account and that during the past six months his average monthly spendable and retained balance was \$2.70. Mr. Jaquez states that although deposits are made to this account from his wages, the State of Arizona takes funds from his wages to pay for legal copies, notary services, and for health visits. Mr. Jaquez states that “all together” he makes “about \$11.04 a month.”

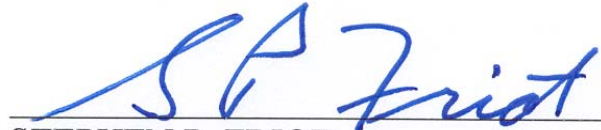
In light of the new information provided by Mr. Jaquez which was not available to the magistrate judge, the court affirms the Report and Recommendation only in part at this stage. The court affirms and adopts the Report to the extent that it sets out the background, to the date of the Report, regarding Mr. Jaquez’s failure to pay the required partial filing fee of \$6.07. In light of Mr. Jaquez’s request for an extension of time, and based on the new submissions regarding Mr. Jaquez’s financial circumstances, the court declines to adopt the Report to the extent that it recommends immediate dismissal of this action. Instead, the court extends the date by which Mr. Jaquez’s initial partial filing fee payment of \$6.07 is due by ninety days from today’s date, as requested by Mr. Jaquez.

Conclusion

For these reasons, the Report and Recommendation of Magistrate Judge Bacharach is **AFFIRMED** and **ADOPTED** in part. The Report is affirmed to the extent that it sets out the background of Mr. Jaquez’s failure to pay the required fee and warns of possible dismissal. The Report’s recommendation that this case be immediately dismissed is not adopted at this time. Based on new information, Mr. Jaquez is **GRANTED** an extension of ninety days from the date of this Order within which to pay the required initial partial filing fee of \$6.07. If timely payment is received, then this matter will be referred back to the magistrate judge for proceedings

consistent with the court's original referral order. If timely payment is not received, and if no timely and sufficient reason for any failure to pay is provided, then this action will be dismissed without prejudice, consistent with the magistrate judge's original recommendation.

Dated this 8th day of September, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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